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# HOUSE BILL No. 1368

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 12-17.4-4-11; IC 20-5-2-8; IC 22-12-1-21; IC 22-12-6-6; IC 22-13-3; IC 22-14-4; IC 31-19-11-1; IC 34-24-1-1; IC 35-41-1; IC 35-43-1-1; IC 35-44-2-2; IC 35-45-6-1; IC 35-47; IC 35-47.5; IC 35-50-2-9.

**Synopsis:** Regulation of explosives. Defines a "regulated explosive" to include a destructive device, an explosive, and a poison gas. Requires the office of the state fire marshal to periodically inspect places where regulated explosives are manufactured or stored. Requires a manufacturer or handler of a regulated explosive to maintain insurance covering fire and explosion losses. Requires the office of the state fire marshal to issue a regulated explosives magazine permit to an applicant if the applicant meets certain qualifications. Creates criminal offenses for the manufacture, transport, distribution, possession, or use of certain regulated explosives or devices. Requires a physician or hospital administrator who treats a person for an injury that was inflicted while the person was making or using a destructive device to report the case to a local law enforcement agency not more than 72 hours after the time the person is treated. Makes conforming amendments.

**Effective:** July 1, 2001.

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## Weinzapfel, Alderman

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January 11, 2001, read first time and referred to Committee on Environmental Affairs.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1368

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A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 12-17.4-4-11 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 11. (a) The division  
3 shall deny a license when an applicant fails to meet the requirements  
4 for a license. The division shall deny a license to an applicant who has  
5 been convicted of any of the following felonies:  
6 (1) Murder (IC 35-42-1-1).  
7 (2) Causing suicide (IC 35-42-1-2).  
8 (3) Assisting suicide (IC 35-42-1-2.5).  
9 (4) Voluntary manslaughter (IC 35-42-1-3).  
10 (5) Reckless homicide (IC 35-42-1-5).  
11 (6) Battery (IC 35-42-2-1).  
12 (7) Aggravated battery (IC 35-42-2-1.5).  
13 (8) Kidnapping (IC 35-42-3-2).  
14 (9) Criminal confinement (IC 35-42-3-3).  
15 (10) A felony sex offense under IC 35-42-4.  
16 (11) Carjacking (IC 35-42-5-2).  
17 (12) Arson (IC 35-43-1-1).



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(13) Incest (IC 35-46-1-3).

(14) Neglect of a dependent (IC 35-46-1-4(a)(1) and IC 35-46-1-4(a)(2)).

(15) Child selling (~~IC 35-46-1-4(b)~~): **(IC 35-46-1-4(d))**.

(16) A felony involving a weapon under IC 35-47 **or IC 35-47.5**.

(17) A felony relating to controlled substances under IC 35-48-4.

(18) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.

(19) A felony that is substantially equivalent to a felony listed in subdivisions (1) through (18) for which the conviction was entered in another state.

The division may deny a license to an applicant who has been convicted of a felony that is not listed in this subsection.

(b) The division shall send written notice by certified mail that the application has been denied and give the reasons for the denial.

(c) An administrative hearing concerning the denial of a license shall be provided upon written request by the applicant. The request must be made not more than thirty (30) days after receiving the written notice under subsection (b).

(d) An administrative hearing shall be held not more than sixty (60) days after receiving a written request.

(e) An administrative hearing shall be held in accordance with IC 4-21.5-3.

(f) The division shall issue a decision not more than sixty (60) days after the conclusion of a hearing.

SECTION 2. IC 20-5-2-8, AS AMENDED BY P.L.197-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. (a) This section applies to:

(1) a school corporation; and

(2) an entity:

(A) with which the school corporation contracts for services; and

(B) that has employees who are likely to have direct, ongoing contact with children within the scope of the employees' employment.

(b) A school corporation or entity may use information obtained under section 7 of this chapter concerning an individual's conviction for one (1) of the following offenses as grounds to not employ or contract with the individual:

(1) Murder (IC 35-42-1-1).

(2) Causing suicide (IC 35-42-1-2).

(3) Assisting suicide (IC 35-42-1-2.5).

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- 1 (4) Voluntary manslaughter (IC 35-42-1-3).
- 2 (5) Reckless homicide (IC 35-42-1-5).
- 3 (6) Battery (IC 35-42-2-1) unless ten (10) years have elapsed from
- 4 the date the individual was discharged from probation,
- 5 imprisonment, or parole, whichever is later.
- 6 (7) Aggravated battery (IC 35-42-2-1.5).
- 7 (8) Kidnapping (IC 35-42-3-2).
- 8 (9) Criminal confinement (IC 35-42-3-3).
- 9 (10) A sex offense under IC 35-42-4.
- 10 (11) Carjacking (IC 35-42-5-2).
- 11 (12) Arson (IC 35-43-1-1) unless ten (10) years have elapsed from
- 12 the date the individual was discharged from probation,
- 13 imprisonment, or parole, whichever is later.
- 14 (13) Incest (IC 35-46-1-3).
- 15 (14) Neglect of a dependent as a Class B felony
- 16 **(IC 35-46-1-4(b)(2))** unless ten (10) years have elapsed from the
- 17 date the individual was discharged from probation, imprisonment,
- 18 or parole, whichever is later.
- 19 (15) Child selling (~~IC 35-46-1-4(c)~~) **(IC 35-46-1-4(d))**.
- 20 (16) Contributing to the delinquency of a minor (IC 35-46-1-8)
- 21 unless ten (10) years have elapsed from the date the individual
- 22 was discharged from probation, imprisonment, or parole,
- 23 whichever is later.
- 24 (17) An offense involving a weapon under IC 35-47 **or**
- 25 **IC 35-47.5** unless ten (10) years have elapsed from the date the
- 26 individual was discharged from probation, imprisonment, or
- 27 parole, whichever is later.
- 28 (18) An offense relating to controlled substances under
- 29 IC 35-48-4 unless ten (10) years have elapsed from the date the
- 30 individual was discharged from probation, imprisonment, or
- 31 parole, whichever is later.
- 32 (19) An offense relating to material or a performance that is
- 33 harmful to minors or obscene under IC 35-49-3 unless ten (10)
- 34 years have elapsed from the date the individual was discharged
- 35 from probation, imprisonment, or parole, whichever is later.
- 36 (20) An offense relating to operating a motor vehicle while
- 37 intoxicated under IC 9-30-5 unless five (5) years have elapsed
- 38 from the date the individual was discharged from probation,
- 39 imprisonment, or parole, whichever is later.
- 40 (21) An offense that is substantially equivalent to any of the
- 41 offenses listed in this subsection in which the judgment of
- 42 conviction was entered under the law of any other jurisdiction.

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(c) An individual employed by a school corporation or an entity described in subsection (a) shall notify the governing body of the school corporation if during the course of the individual's employment the individual is convicted in Indiana or another jurisdiction of an offense described in subsection (b).

SECTION 3. IC 22-12-6-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) The commission may adopt rules under IC 4-22-2 setting a fee schedule for the following:

- (1) Fireworks display permits issued under IC 22-11-14-2.
- (2) Explosives magazine permits issued under ~~IC 22-14-4~~ **IC 35-47.5-4**.
- (3) Design releases issued under IC 22-15-3.
- (4) Certification of industrialized building systems and mobile structures under IC 22-15-4.
- (5) Inspection of regulated amusement devices under IC 22-15-7.
- (6) Application fees for variance requests under IC 22-13-2-11 and inspection fees for exemptions under IC 22-13-4-5.

(b) Fee schedules set under this section must be sufficient to pay all of the costs, direct and indirect, that are payable from the fund into which the fee must be deposited, after deducting other money deposited in the fund. In setting these fee schedules, the commission may consider differences in the degree or complexity of the activity being performed for each fee.

(c) The fee schedule set for design releases issued under subsection (a)(3) may not be changed more than one (1) time each year. The commission may include in this fee schedule a fee for the review of plans and specifications and, if a political subdivision does not have a program to periodically inspect the construction covered by the design release, a fee for inspecting the construction.

(d) The fee schedule set under subsection (a) for design releases may provide that a portion of the fees collected shall be deposited in the statewide fire and building safety education fund established under section 3 of this chapter.

SECTION 4. IC 22-13-3-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. The commission shall adopt fire safety rules that prohibit the following:

- (1) The storage of regulated explosives (**as defined in IC 35-47.5-2-15**) in quantities exceeding the maximum quantity specified by the commission.
- (2) The storage of regulated explosives (**as defined in IC 35-47.5-2-15**) at a site that is located less than the minimum

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distance specified by the commission from a railroad, highway, or other place of habitation or assembly.

(3) The use of a receptacle, burning fixture or equipment, heating fixture or equipment, or structure for an explosive, flammable, or other combustible matter that does not meet the design and composition standards specified by the commission.

(4) The keeping, storage, use, manufacture, sale, handling, transportation, or disposition of an explosive, flammable, or other combustible matter in violation of any other requirements specified by the commission.

SECTION 5. IC 22-13-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) This section applies to the following laboratories:

(1) Analytical laboratories approved by the office of the state fire marshal under the alternative criteria established by the commission in its rules.

(2) Laboratories that are:

(A) operated by a college, university, school, or other educational entity for the purpose of instruction or research; and

(B) approved by the office of the state fire marshal under the alternative criteria established by the commission in the rules.

(b) The commission may:

(1) apply different rules to the manufacture of regulated explosives (**as defined in IC 35-47.5-2-15**) in a laboratory described in subsection (a) than apply to other places where regulated explosives (**as defined in IC 35-47.5-2-15**) are manufactured; and

(2) adopt rules under IC 4-22-2 to exempt laboratories described in subsection (a) from the regulated explosive magazines permit requirement under ~~IC 22-14-4~~ **IC 35-47.5-4**.

SECTION 6. IC 31-19-11-1, AS AMENDED BY P.L.200-1999, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) Whenever the court has heard the evidence and finds that:

(1) the adoption requested is in the best interest of the child;

(2) the petitioner or petitioners for adoption are of sufficient ability to rear the child and furnish suitable support and education;

(3) the report of the investigation and recommendation under IC 31-19-8-5 has been filed;

(4) the attorney or agency arranging an adoption has filed with the



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1 court an affidavit prepared by the state department of health under  
 2 IC 31-19-5-16 indicating whether a man is entitled to notice of the  
 3 adoption because the man has registered with the putative father  
 4 registry in accordance with IC 31-19-5;

5 (5) proper notice arising under subdivision (4), if notice is  
 6 necessary, of the adoption has been given;

7 (6) the attorney or agency has filed with the court an affidavit  
 8 prepared by the state department of health under:

9 (A) IC 31-19-6 indicating whether a record of a paternity  
 10 determination; or

11 (B) IC 16-37-2-2(g) indicating whether a paternity affidavit  
 12 executed under IC 16-37-2-2.1;

13 has been filed in relation to the child;

14 (7) proper consent, if consent is necessary, to the adoption has  
 15 been given; and

16 (8) the petitioner for adoption is not prohibited from adopting the  
 17 child as the result of an inappropriate criminal history described  
 18 in subsection (c);

19 the court shall grant the petition for adoption and enter an adoption  
 20 decree.

21 (b) A court may not grant an adoption unless the department's  
 22 affidavit under IC 31-19-5-16 is filed with the court as provided under  
 23 subsection (a)(4).

24 (c) A conviction of a felony or a misdemeanor related to the health  
 25 and safety of a child by a petitioner for adoption is a permissible basis  
 26 for the court to deny the petition for adoption. In addition, the court  
 27 may not grant an adoption if a petitioner for adoption has been  
 28 convicted of any of the felonies described as follows:

29 (1) Murder (IC 35-42-1-1).

30 (2) Causing suicide (IC 35-42-1-2).

31 (3) Assisting suicide (IC 35-42-1-2.5).

32 (4) Voluntary manslaughter (IC 35-42-1-3).

33 (5) Reckless homicide (IC 35-42-1-5).

34 (6) Battery as a felony (IC 35-42-2-1).

35 (7) Aggravated battery (IC 35-42-2-1.5).

36 (8) Kidnapping (IC 35-42-3-2).

37 (9) Criminal confinement (IC 35-42-3-3).

38 (10) A felony sex offense under IC 35-42-4.

39 (11) Carjacking (IC 35-42-5-2).

40 (12) Arson (IC 35-43-1-1).

41 (13) Incest (IC 35-46-1-3).

42 (14) Neglect of a dependent (IC 35-46-1-4(a)(1) and

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IC 35-46-1-4(a)(2)).

(15) Child selling (~~IC 35-46-1-4(b))~~: **(IC 35-46-1-4(d))**.

(16) A felony involving a weapon under IC 35-47 **or IC 35-47.5**.

(17) A felony relating to controlled substances under IC 35-48-4.

(18) An offense relating to material or a performance that is harmful to minors or obscene under IC 35-49-3.

(19) A felony that is substantially equivalent to a felony listed in subdivisions (1) through (18) for which the conviction was entered in another state.

However, the court is not prohibited from granting an adoption based upon a felony conviction under subdivision (6), (11), (12), (16), or (17), or its equivalent under subdivision (19), if the offense was not committed within the immediately preceding five (5) year period.

SECTION 7. IC 34-24-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-41-1), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in cocaine or narcotic drug (IC 35-48-4-1).

(ii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iii) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(iv) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(v) Dealing in a counterfeit substance (IC 35-48-4-5).

(vi) Possession of cocaine or narcotic drug (IC 35-48-4-6).

(vii) Dealing in paraphernalia (IC 35-48-4-8.5).

(viii) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-6-6.

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 (other than items

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subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):

- (A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;
- (B) used to facilitate any violation of a criminal statute; or
- (C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

- (A) commit, attempt to commit, or conspire to commit;
- (B) facilitate the commission of; or
- (C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4).

(5) Real property owned by a person who uses it to commit any of the following as a Class A felony, a Class B felony, or a Class C felony:

- (A) Dealing in cocaine or narcotic drug (IC 35-48-4-1).
- (B) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (C) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (D) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(11).

(7) Recordings sold, rented, transported, or possessed by a person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-41-1-23) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

**(10) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.**

(b) A vehicle used by any person as a common or contract carrier in the transaction of business as a common or contract carrier is not subject to seizure under this section, unless it can be proven by a preponderance of the evidence that the owner of the vehicle knowingly permitted the vehicle to be used to engage in conduct that subjects it to

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seizure under subsection (a).

(c) Money, negotiable instruments, securities, weapons, communications devices, or any property commonly used as consideration for a violation of IC 35-48-4 found near or on a person who is committing, attempting to commit, or conspiring to commit any of the following offenses shall be admitted into evidence in an action under this chapter as prima facie evidence that the money, negotiable instrument, security, or other thing of value is property that has been used or was to have been used to facilitate the violation of a criminal statute or is the proceeds of the violation of a criminal statute:

(1) IC 35-48-4-1 (dealing in cocaine or narcotic drug).

(2) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled substance).

(3) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

(4) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Class B felony.

(5) IC 35-48-4-6 (possession of cocaine or narcotic drug) as a Class A felony, Class B felony, or Class C felony.

(6) IC 35-48-4-10 (dealing in marijuana, hash oil, or hashish) as a Class C felony.

SECTION 8. IC 35-41-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. "Deadly weapon" means the following:

(1) A loaded or unloaded firearm.

(2) A **destructive device**, weapon, device, taser (as defined in IC 35-47-8-3) or electronic stun weapon (as defined in IC 35-47-8-1), equipment, chemical substance, or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.

(3) An animal (as defined in IC 35-46-3-3) that is:

(A) readily capable of causing serious bodily injury; and

(B) used in the commission or attempted commission of a crime.

SECTION 9. IC 35-41-1-8.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 8.5. "Destructive device" has the meaning set forth in IC 35-47.5-2-5.**

SECTION 10. IC 35-43-1-1, AS AMENDED BY P.L.88-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. (a) A person who, by means of fire, ~~or~~ explosive, **or destructive device**, knowingly or intentionally damages:

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(1) a dwelling of another person without the other person's consent;

(2) property of any person under circumstances that endanger human life;

(3) property of another person without the other person's consent if the pecuniary loss is at least five thousand dollars (\$5,000); or

(4) a structure used for religious worship without the consent of the owner of the structure;

commits arson, a Class B felony. However, the offense is a Class A felony if it results in either bodily injury or serious bodily injury to any person other than a defendant.

(b) A person who commits arson for hire commits a Class B felony. However, the offense is a Class A felony if it results in bodily injury to any other person.

(c) A person who, by means of fire, ~~or~~ explosive, **or destructive device**, knowingly or intentionally damages property of any person with intent to defraud commits arson, a Class C felony.

(d) A person who, by means of fire, ~~or~~ explosive, **or destructive device**, knowingly or intentionally damages property of another person without the other person's consent so that the resulting pecuniary loss is at least two hundred fifty dollars (\$250) but less than five thousand dollars (\$5,000) commits arson, a Class D felony.

SECTION 11. IC 35-44-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) As used in this section, "consumer product" has the meaning set forth in IC 35-45-8-1.

(b) A person who reports, by telephone, telegraph, mail, or other written or oral communication, that:

(1) the person or another person has placed or intends to place an explosive, **destructive device**, or other destructive substance in a building or transportation facility; or

(2) there has been or there will be tampering with a consumer product introduced into commerce;

knowing the report to be false commits false reporting, a Class D felony.

(c) A person who:

(1) gives a false report of the commission of a crime or gives false information in the official investigation of the commission of a crime, knowing the report or information to be false;

(2) gives a false alarm of fire to the fire department of a governmental entity, knowing the alarm to be false;

(3) makes a false request for ambulance service to an ambulance service provider, knowing the request to be false; or

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(4) gives a false report concerning a missing child (as defined in IC 10-1-7-2) or gives false information in the official investigation of a missing child knowing the report or information to be false;

commits false informing, a Class B misdemeanor. However, the offense is a Class A misdemeanor if it substantially hinders any law enforcement process or if it results in harm to an innocent person.

SECTION 12. IC 35-45-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. As used in this chapter:

"Documentary material" means any document, drawing, photograph, recording, or other tangible item containing compiled data from which information can be either obtained or translated into a usable form.

"Enterprise" means:

- (1) a sole proprietorship, corporation, limited liability company, partnership, business trust, or governmental entity; or
- (2) a union, an association, or a group, whether a legal entity or merely associated in fact.

"Pattern of racketeering activity" means engaging in at least two (2) incidents of racketeering activity that have the same or similar intent, result, accomplice, victim, or method of commission, or that are otherwise interrelated by distinguishing characteristics that are not isolated incidents. However, the incidents are a pattern of racketeering activity only if at least one (1) of the incidents occurred after August 31, 1980, and if the last of the incidents occurred within five (5) years after a prior incident of racketeering activity.

"Racketeering activity" means to commit, to attempt to commit, to conspire to commit a violation of, or aiding and abetting in a violation of any of the following:

- (1) A provision of IC 23-2-1, or of a rule or order issued under IC 23-2-1.
- (2) A violation of IC 35-45-9.
- (3) A violation of IC 35-47.
- (4) A violation of IC 35-49-3.
- (5) Murder (IC 35-42-1-1).
- (6) Battery as a Class C felony (IC 35-42-2-1).
- (7) Kidnapping (IC 35-42-3-2).
- (8) Child exploitation (IC 35-42-4-4).
- (9) Robbery (IC 35-42-5-1).
- (10) Carjacking (IC 35-42-5-2).
- (11) Arson (IC 35-43-1-1).
- (12) Burglary (IC 35-43-2-1).



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- (13) Theft (IC 35-43-4-2).
- (14) Receiving stolen property (IC 35-43-4-2).
- (15) Forgery (IC 35-43-5-2).
- (16) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(9)).
- (17) Bribery (IC 35-44-1-1).
- (18) Official misconduct (IC 35-44-1-2).
- (19) Conflict of interest (IC 35-44-1-3).
- (20) Perjury (IC 35-44-2-1).
- (21) Obstruction of justice (IC 35-44-3-4).
- (22) Intimidation (IC 35-45-2-1).
- (23) Promoting prostitution (IC 35-45-4-4).
- (24) Promoting professional gambling (IC 35-45-5-4).
- (25) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- (26) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (27) Dealing in a schedule IV controlled substance (IC 35-48-4-3).
- (28) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- (29) Dealing in marijuana, hash oil, or hashish (IC 35-48-4-10).
- (30) Money laundering (IC 35-45-15-5).

**(31) A violation of IC 35-47.5-5.**

SECTION 13. IC 35-47-5-8, AS AMENDED BY P.L.104-2000, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. A person who owns or possesses

~~(1) a machine gun or~~

~~(2) a bomb;~~

commits a Class C felony.

SECTION 14. IC 35-47-5-9, AS AMENDED BY P.L.104-2000, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. A person who

~~(1) operates a loaded machine gun or~~

~~(2) hurls, drops, places, or detonates a bomb;~~

commits a Class B felony.

SECTION 15. IC 35-47-5-10, AS AMENDED BY P.L.104-2000, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. The provisions of sections 8 or 9 of this chapter shall not be construed to apply to any of the following:

(1) Members of the military or naval forces of the United States, National Guard of Indiana, or Indiana State Guard, when on duty or practicing.

(2) Machine guns ~~or bombs~~ kept for display as relics and which are rendered harmless and not usable.

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(3) Any of the law enforcement officers of this state or the United States while acting in the furtherance of their duties.

(4) Persons lawfully engaged in the display, testing, or use of fireworks.

(5) Agencies of state government.

(6) Persons permitted by law to engage in the business of manufacturing, assembling, conducting research on, or testing machine guns, ~~bombs~~, airplanes, tanks, armored vehicles, or ordnance equipment or supplies while acting within the scope of such business.

(7) Persons possessing, or having applied to possess, machine guns under applicable United States statutes. Such machine guns must be transferred as provided in this article.

(8) Persons lawfully engaged in the manufacture, transportation, distribution, use or possession of any material, substance, or device for the sole purpose of industrial, agricultural, mining, construction, educational, or any other lawful use.

SECTION 16. IC 35-47-7-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 5. The:**

**(1) physician who treats a person; or**

**(2) administrator or the administrator's designee of the hospital or outpatient surgical center where a person was treated;**

**for an injury that was inflicted while the person was making or using a destructive device shall report the case to a local law enforcement agency not more than seventy-two (72) hours after the person is treated. The report may be made orally or in writing.**

SECTION 17. IC 35-47.5 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]:

## **ARTICLE 47.5. CONTROLLED EXPLOSIVES**

### **Chapter 1. Applicability**

**Sec. 1. This article does not apply to the following:**

**(1) Fertilizers, propellant actuated devices, or propellant activated industrial tools:**

**(A) manufactured;**

**(B) imported;**

**(C) distributed; or**

**(D) used;**

**for their intended purposes.**

**(2) A pesticide that is:**



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- 1 (A) manufactured;
- 2 (B) stored;
- 3 (C) transported;
- 4 (D) distributed;
- 5 (E) possessed; or
- 6 (F) used;
- 7 in accordance with Chapter 7 of Title 2, the federal
- 8 Insecticide, Fungicide, and Rodenticide Act, 61 Stat. 163, as
- 9 amended, and the federal Environmental Pesticide Control
- 10 Act of 1972, P.L.92-516, as amended.

## 11 Chapter 2. Definitions

12 Sec. 1. The definitions in this chapter apply throughout this  
13 article.

14 Sec. 2. "Bacteriological weapon" or "biological weapon" means  
15 a device:

- 16 (1) that is designed to permit the intentional release into the
- 17 population or environment of microbial or other biological
- 18 agents or toxins, whatever their origin or method of
- 19 production, in a manner not otherwise authorized by law; or
- 20 (2) the development, production, or stockpiling of which is
- 21 prohibited under the "Convention on the Prohibition of the
- 22 Development, Production, and Stockpiling of Bacteriological
- 23 (Biological) and Toxin Weapons and Their Destruction", 26
- 24 U.S.T. 583, TIAS 8063.

25 Sec. 3. "Booby trap" means a device meant to cause death or  
26 bodily injury by:

- 27 (1) hiding the device; or
- 28 (2) activating the device by trip-wires, switches,
- 29 anti-disturbance, or other remote means.

30 Sec. 4. "Commission" refers to the fire prevention and building  
31 safety commission established by IC 22-12-2-1.

32 Sec. 5. (a) "Destructive device" means:

- 33 (1) an explosive, incendiary, or over-pressure device or poison
- 34 gas that is configured as a:
- 35 (A) bomb;
- 36 (B) grenade;
- 37 (C) rocket with a propellant charge of more than four (4)
- 38 ounces;
- 39 (D) missile having an explosive or incendiary charge of
- 40 more than one-quarter (1/4) ounce;
- 41 (E) poison gas;
- 42 (F) a mine;



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- 1 (G) Molotov cocktail; or  
 2 (H) device that is substantially similar to an item described  
 3 in clauses (A) through (G);  
 4 (2) a type of weapon that may be readily converted to expel a  
 5 projectile by the action of an explosive or other propellant  
 6 through a barrel that has a bore diameter of more than  
 7 one-half (1/2) inch;  
 8 (3) a weapon of mass destruction;  
 9 (4) a bacteriological weapon or biological weapon; or  
 10 (5) a combination of parts designed or intended for use in the  
 11 conversion of a device into a destructive device.  
 12 (b) The term does not include the following:  
 13 (1) A pistol, rifle, shotgun, or weapon suitable for sporting or  
 14 personal safety purposes or ammunition.  
 15 (2) A device that is neither designed nor redesigned for use as  
 16 a weapon.  
 17 (3) A device that, although originally designed for use as a  
 18 weapon, is redesigned for use as a signaling, pyrotechnic, line  
 19 throwing, safety, or similar device.  
 20 (4) A surplus military ordnance sold, loaned, or given by  
 21 authority of the appropriate official of the United States  
 22 Department of Defense.  
 23 Sec. 6. "Detonator" means a device containing a detonating  
 24 charge that is used to initiate detonation in an explosive, including  
 25 the following:  
 26 (1) Electric blasting caps.  
 27 (2) Blasting caps for use with safety fuses.  
 28 (3) Detonating cord delay connectors.  
 29 (4) Blasting caps for use with a shock tube.  
 30 (5) Improvised devices designed to function as a detonator.  
 31 Sec. 7. "Distribute" means the actual, constructive, or  
 32 attempted transfer from one (1) person to another.  
 33 Sec. 8. "Explosives" means a chemical compound or other  
 34 substance or mechanical system intended to produce an explosion  
 35 capable of causing injury to persons or damage to property or  
 36 containing oxidizing and combustible units or other ingredients in  
 37 such proportions or quantities that ignition, fire, friction,  
 38 concussion, percussion, or detonation may produce an explosion  
 39 capable of causing injury to persons or damage to property,  
 40 including the substances designated in IC 35-47.5-3. The term does  
 41 not include the following:  
 42 (1) A model rocket and model rocket engine designed, sold,

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and used to propel recoverable aero models.

(2) A paper cap in which the explosive content does not average more than twenty-five hundredths (0.25) grains of explosive mixture per paper cap for toy pistols, toy cannons, toy canes, toy guns, or other devices using paper caps unless the paper cap is used as a component of a destructive device.

Sec. 9. "Hoax device" or "replica" means a device or article that has the appearance of a destructive device or detonator.

Sec. 10. "Incendiary" means a flammable liquid or compound with a flash point not greater than one hundred fifty (150) degrees Fahrenheit, as determined by a Tagliabue or an equivalent closed cup device, including gasoline, kerosene, fuel oil, or a derivative of these substances.

Sec. 11. "Office" refers to the office of the state fire marshal.

Sec. 12. "Over-pressure device" means:

- (1) a frangible container filled with an explosive gas or expanding gas that is designed or constructed to cause the container to break or fracture in a manner that is capable of causing death, bodily harm, or property damage; or
- (2) a container filled with an explosive gas or expanding gas or chemicals that generate an expanding gas.

Sec. 13. "Poison gas" means a toxic chemical or its precursors that through their chemical action or properties on life processes cause death or permanent injury to human beings. The term does not include the following:

- (1) Riot control agents, smoke, and obscurant materials or medical products that are manufactured, possessed, transported, or used in accordance with the laws of the United States and of Indiana.
- (2) Tear gas devices designed to be carried on or about the person that contain not more than one-half (1/2) ounce of the chemical.

Sec. 14. "Property" means real or personal property of any kind, including money, choses in action, and other similar interests in property.

Sec. 15. (a) "Regulated explosive" includes:

- (1) a destructive device;
- (2) an explosive; and
- (3) a poison gas.

(b) The term does not include the following:

- (1) An explosive in a manufactured article that is designed and packaged in a manner that is likely to prevent an

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explosion resulting in property damage or personal injury. A manufactured article to which this subdivision applies includes fixed ammunition for small arms, a firework, and a safety fuse match.

(2) Gasoline, kerosene, naphtha, turpentine, or benzene.

(3) An explosive that is being transported on or in a vessel, railroad car, or highway vehicle in conformity with the regulations adopted by the United States Department of Transportation.

(4) A blasting explosive that is transported or used for agricultural purposes and that is in a quantity that does not exceed two hundred (200) pounds.

(5) Ammonium nitrate compounds kept for mining purposes and in accordance with the regulations prescribed by the Federal Bureau of Mines.

Sec. 16. "Weapon of mass destruction" means a device that is designed to release radiation or radioactivity at a level that will result in internal or external bodily injury or death to a person.

### Chapter 3. Classification of Regulated Explosives

Sec. 1. The following materials are regulated explosives within the meaning of this article:

- (1) Acetylides of heavy metals.
- (2) Aluminum containing polymeric propellant.
- (3) Aluminum ophorite explosive.
- (4) Amatex.
- (5) Amatol.
- (6) Ammonal.
- (7) Ammonium nitrate explosive mixtures, cap sensitive.
- (8) Ammonium nitrate explosive mixtures, noncap sensitive.
- (9) Aromatic nitro-compound explosive mixtures.
- (10) Ammonium perchlorate explosive mixtures.
- (11) Ammonium perchlorate composite propellant.
- (12) Ammonium picrate (picrate of ammonia, explosive D).
- (13) Ammonium salt lattice with isomorphously substituted inorganic salts.
- (14) Ammonium tri-iodide.
- (15) ANFO (ammonium nitrate-fuel oil).
- (16) Baratol.
- (17) Baronol.
- (18) BEAF (1,2-bis (2,2-difluoro-2-nitroacetoxyethane)).
- (19) Black powder.
- (20) Black powder based explosive mixtures.



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- 1       **(21) Blasting agents, nitro-carbo-nitrates, including noncap**
- 2       **sensitive slurry and water-gel explosives.**
- 3       **(22) Blasting caps.**
- 4       **(23) Blasting gelatin.**
- 5       **(24) Blasting powder.**
- 6       **(25) BTNEC (bis (trinitroethyl) carbonate).**
- 7       **(26) Bulk salutes.**
- 8       **(27) BTNEN (bis (trinitroethyl) nitramine).**
- 9       **(28) BTTN (1,2,4 butanetriol trinitrate).**
- 10       **(29) Butyl tetryl.**
- 11       **(30) Calcium nitrate explosive mixture.**
- 12       **(31) Cellulose hexanitate explosive mixture.**
- 13       **(32) Chlorate explosive mixtures.**
- 14       **(33) Composition A and variations.**
- 15       **(34) Composition B and variations.**
- 16       **(35) Composition C and variations.**
- 17       **(36) Copper acetylide.**
- 18       **(37) Cyanuric triazide.**
- 19       **(38) Cyclotrimethylenetrinitramine (RDX).**
- 20       **(39) Cyclotetramethylenetetranitramine (HMX).**
- 21       **(40) Cyclonite (RDX).**
- 22       **(41) Cyclitol.**
- 23       **(42) DATB (diaminotrinitrobenzene).**
- 24       **(43) DDNP (diazodinitrophenol).**
- 25       **(44) DEGDN (diethyleneglycol dinitrate).**
- 26       **(45) Detonating cord.**
- 27       **(46) Detonators.**
- 28       **(47) Dimethylol dimethyl methane dinitrate composition.**
- 29       **(48) Dinitroethyleneurea.**
- 30       **(49) Dinitroglycerine (glycerol dinitrate).**
- 31       **(50) Dinitrophenol.**
- 32       **(51) Dinitrophenolates.**
- 33       **(52) Dinitrophenyl hydrazine.**
- 34       **(53) Dinitroresorcinol.**
- 35       **(54) Dinitrotoluene-sodium nitrate explosive mixtures.**
- 36       **(55) DIPAM.**
- 37       **(56) Dipicryl sulfone.**
- 38       **(57) Dipicrylamine.**
- 39       **(58) DNDP (dinitropentano nitrile).**
- 40       **(59) DNPA (2,2-dinitropropyl acrylate).**
- 41       **(60) Dynamite.**
- 42       **(61) EDDN (ethylene diamine dinitrate).**

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- 1 (62) EDNA.
- 2 (63) Ednatol.
- 3 (64) EDNP (ethyl 4,4-dinitropentanoate).
- 4 (65) Erythritol tetranitrate explosives.
- 5 (66) Esters of nitro-substituted alcohols.
- 6 (67) EGDN (ethylene glycol dinitrate).
- 7 (68) Ethyl-tetryl.
- 8 (69) Explosive conitrates.
- 9 (70) Explosive gelatins.
- 10 (71) Explosive mixtures containing oxygen-releasing inorganic
- 11 salts and hydrocarbons.
- 12 (72) Explosive mixtures containing oxygen-releasing inorganic
- 13 salts and nitro bodies.
- 14 (73) Explosive mixtures containing oxygen-releasing inorganic
- 15 salts and water insoluble fuels.
- 16 (74) Explosive mixtures containing oxygen-releasing inorganic
- 17 salts and water soluble fuels.
- 18 (75) Explosive mixtures containing sensitized nitromethane.
- 19 (76) Explosive mixtures containing tetranitromethane
- 20 (nitroform).
- 21 (77) Explosive nitro compounds of aromatic hydrocarbons.
- 22 (78) Explosive organic nitrate mixtures.
- 23 (79) Explosive liquids.
- 24 (80) Explosive powders.
- 25 (81) Flash powder.
- 26 (82) Fulminate of mercury.
- 27 (83) Fulminate of silver.
- 28 (84) Fulminating gold.
- 29 (85) Fulminating mercury.
- 30 (86) Fulminating platinum.
- 31 (87) Fulminating silver.
- 32 (88) Gelatinized nitrocellulose.
- 33 (89) Gem-dinitro aliphatic explosive mixtures.
- 34 (90) Guanyl nitrosamino guanyl tetrazene.
- 35 (91) Guanyl nitrosamino guanylidene hydrazine.
- 36 (92) Hexogene or octogene and a nitrated N-methylaniline.
- 37 (93) Hexolites.
- 38 (94) HMX (cyclo-1,3,5,7-tetramethylene-
- 39 2,4,6,8-tetranitramine; octogen).
- 40 (95) Hydrazinium nitrate/hydrazine/aluminum explosive
- 41 system.
- 42 (96) Hydrazoic acid.

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- 1 (97) Igniter cord.
- 2 (98) Igniters.
- 3 (99) Initiating tube systems.
- 4 (100) KDNBF (potassium dinitrobenzo-furoxane).
- 5 (101) Lead azide.
- 6 (102) Lead mannite.
- 7 (103) Lead mononitroresorcinate.
- 8 (104) Lead picrate.
- 9 (105) Lead salts, explosive.
- 10 (106) Lead styphnate (styphnate of lead, lead
- 11 trinitroresorcinate).
- 12 (107) Liquid nitrated polyol and trimethylolethane.
- 13 (108) Liquid oxygen explosives.
- 14 (109) Magnesium ophorite explosives.
- 15 (110) Mannitol hexanitrate.
- 16 (111) MDNP (methyl 4,4-dinitropentanoate).
- 17 (112) MEAN (monoethanolamine nitrate).
- 18 (113) Mercuric fulminate.
- 19 (114) Mercury oxalate.
- 20 (115) Mercury tartrate.
- 21 (116) Metriol trinitrate.
- 22 (117) Minol-2 (40% TNT, 40% ammonium nitrate, 20%
- 23 aluminum).
- 24 (118) MMAN (monomethylamine nitrate); methylamine
- 25 nitrate.
- 26 (119) Mononitrotoluene-nitroglycerin mixture.
- 27 (120) Monopropellants.
- 28 (121) NIBTN (nitroisobutametrial trinitrate).
- 29 (122) Nitrate sensitized with gelled nitroparaffin.
- 30 (123) Nitrated carbohydrate explosive.
- 31 (124) Nitrated glucoside explosive.
- 32 (125) Nitrated polyhydric alcohol explosives.
- 33 (126) Nitrates of soda explosive mixtures.
- 34 (127) Nitric acid and a nitro aromatic compound explosive.
- 35 (128) Nitric acid and carboxylic fuel explosive.
- 36 (129) Nitric acid explosive mixtures.
- 37 (130) Nitro aromatic explosive mixtures.
- 38 (131) Nitro compounds of furane explosive mixtures.
- 39 (132) Nitrocellulose explosive.
- 40 (133) Nitroderivative of urea explosive mixture.
- 41 (134) Nitrogelatin explosive.
- 42 (135) Nitrogen trichloride.

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- 1 (136) Nitrogen tri-iodide.
- 2 (137) Nitroglycerine (NG, RNG, nitro, glyceryl trinitrate,
- 3 trinitroglycerine).
- 4 (138) Nitroglycide.
- 5 (139) Nitroglycol (ethylene glycol dinitrate, EGDN).
- 6 (140) Nitroguanidine explosives.
- 7 (141) Nitroparaffins explosive grade and ammonium nitrate
- 8 mixtures.
- 9 (142) Nitronium perchlorate propellant mixtures.
- 10 (143) Nitrostarch.
- 11 (144) Nitro-substituted carboxylic acids.
- 12 (145) Nitrourea.
- 13 (146) Octogen (HMX).
- 14 (147) Octol (75% HMX, 25% TNT).
- 15 (148) Organic amine nitrates.
- 16 (149) Organic nitramines.
- 17 (150) PBX (RDX and plasticizer).
- 18 (151) Pellet powder.
- 19 (152) Penthrinite composition.
- 20 (153) Pentolit.
- 21 (154) Perchlorate explosive mixtures.
- 22 (155) Peroxide based explosive mixtures.
- 23 (156) PETN (nitropentaerythrite, pentaerythrite tetranitrate,
- 24 pentaerythritol tetranitrate).
- 25 (157) Picramic acid and its salts.
- 26 (158) Picramide.
- 27 (159) Picrate of potassium explosive mixtures.
- 28 (160) Picratol.
- 29 (161) Picric acid (manufactured as an explosive).
- 30 (162) Picryl chloride.
- 31 (163) Picryl fluoride.
- 32 (164) PLX (95% nitromethane, 5% ethylenediamine).
- 33 (165) Polynitro aliphatic compounds.
- 34 (166) Polyolpolynitrate-nitrocellulose explosive gels.
- 35 (167) Potassium chlorate and lead sulfocyanate explosive.
- 36 (168) Potassium nitrate explosive mixtures.
- 37 (169) Potassium nitroaminotetrazole.
- 38 (170) Pyrotechnic compositions.
- 39 (171) PYX (2,6-bis(picrylamino)-3,5-dinitropyridine).
- 40 ( 1 7 2 ) R D X ( c y c l o n i t e , h e x o g e n ,
- 41 T4,cyclo-1,3,5,-trimethylene-2,4,6,-rinitramine;
- 42 hexahydro-1,3,5-trinitro-S-triazine).

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- 1 (173) Safety fuse.
- 2 (174) Salutes (bulk).
- 3 (175) Salts of organic amino sulfonic acid explosive mixture.
- 4 (176) Silver acetylide.
- 5 (177) Silver azide.
- 6 (178) Silver fulminate.
- 7 (179) Silver oxalate explosive mixtures.
- 8 (180) Silver styphnate.
- 9 (181) Silver tartrate explosive mixtures.
- 10 (182) Silver tetrazene.
- 11 (183) Slurried explosive mixtures of water, inorganic
- 12 oxidizing salt, gelling agent, fuel, and sensitizer, cap sensitive.
- 13 (184) Smokeless powder.
- 14 (185) Sodatol.
- 15 (186) Sodium amatol.
- 16 (187) Sodium azide explosive mixture.
- 17 (188) Sodium dinitro-ortho-cresolate.
- 18 (189) Sodium nitrate-potassium nitrate explosive mixture.
- 19 (190) Sodium picramate.
- 20 (191) Special fireworks (as defined in IC 22-11-14-1).
- 21 (192) Squibs.
- 22 (193) Styphnic acid explosives.
- 23 (194) Tacot (tetranitro-2,3,5,6-dibenzo-1,3a,4,6a
- 24 tetrazapentalene).
- 25 (195) TATB (triaminotrinitrobenzene).
- 26 (196) TATP (triacetone triperoxide).
- 27 (197) TEGDN (triethylene glycol dinitrate).
- 28 (198) Tetrazene (tetracene, tetrazine, l(5-tetrazolyl)-4-guanyl
- 29 tetrazene hydrate).
- 30 (199) Tetranitrocarbazole.
- 31 (200) Tetryl (2,4,6 tetranitro-N-methylaniline).
- 32 (201) Tetrytol.
- 33 (202) Thickened inorganic oxidizer salt slurried explosive
- 34 mixture.
- 35 (203) TMETN (trimethylolethane trinitrate).
- 36 (204) TNEF (trinitroethyl formal).
- 37 (205) TNEOC (trinitroethylorthocarbonate).
- 38 (206) TNEOF (trinitroethylorthoformate).
- 39 (207) TNT (trinitrotoluene, trotyl, trilit, triton).
- 40 (208) Torpex.
- 41 (209) Tridite.
- 42 (210) Trimethylol ethyl methane trinitrate composition.

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- (211) Trimethylolthane trinitrate-nitrocellulose.
- (212) Trimonite.
- (213) Trinitroanisole.
- (214) Trinitrobenzene.
- (215) Trinitrobenzoic acid.
- (216) Trinitrocresol.
- (217) Trinitro-meta-cresol.
- (218) Trinitronaphthalene.
- (219) Trinitrophenetol.
- (220) Trinitrophloroglucinol.
- (221) Trinitroresorcinol.
- (222) Tritonal.
- (223) Urea nitrate.
- (224) Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates, cap sensitive.
- (225) Water-in-oil emulsion explosive compositions.
- (226) Xanthamona hydrophilic colloid explosive mixture.

#### Chapter 4. Registration and Control

Sec. 1. The office shall carry out a program to periodically inspect places where regulated explosives are manufactured.

Sec. 2. (a) The office may order any person engaged in the manufacture or handling of a regulated explosive and any person with control over a place where regulated explosives are manufactured or handled to maintain insurance covering fire and explosion losses. The order is not effective until sixty (60) days after the date that notice of the order was received.

(b) The state fire marshal shall specify the insurance required under subsection (a) in an amount not less than ten thousand dollars (\$10,000) nor more than two hundred fifty thousand dollars (\$250,000).

(c) Proof of the insurance required under this section must be maintained with the department of insurance.

(d) The insurance commissioner may exempt a person from the insurance requirements under this section if an applicant for the exemption submits proof that the applicant has the financial ability to discharge all judgments in the amount specified by the state fire marshal. The insurance commissioner may revoke an exemption under this subsection if the commissioner requires additional proof of financial ability and:

- (1) the exempted person fails to comply with the order; or
- (2) the insurance commissioner determines that the exempted person has failed to provide adequate proof of financial





ability.

Sec. 3. The office shall carry out a program to periodically inspect places where regulated explosives are stored.

Sec. 4. (a) The office shall issue a regulated explosives magazine permit to maintain an explosives magazine to an applicant who qualifies under section 5 of this chapter.

(b) A permit issued under section 5 of this chapter expires one (1) year after it is issued. The permit is limited to storage of the types and maximum quantities of explosives specified in the permit in the place covered by the permit and under the construction and location requirements specified in the rules of the commission.

Sec. 5. (a) To qualify for a regulated explosives permit an applicant must:

(1) submit information on the form provided by the state fire marshal describing:

(A) the location of the affected magazine;

(B) the types and maximum quantities of explosives that will be kept in the place covered by the application; and

(C) the distance that the affected magazine will be located from the nearest highway, railway, and structure that are also used as places of habitation or assembly other than the manufacture of explosives;

(2) demonstrate through an inspection that the magazine is constructed and located in accordance with the rules adopted by the commission; and

(3) pay the fee under IC 22-12-6-6.

(b) To qualify for the renewal of a regulated explosives permit, the applicant must pay the fee under IC 22-12-6-6.

Sec. 6. (a) This section does not apply to storage that is exempted from the requirements of this section in the rules adopted by the commission under IC 22-13-3.

(b) A person who:

(1) stores a regulated explosive;

(2) has control over a regulated explosive that is stored; or

(3) has control over a place where a regulated explosive is stored;

without a regulated explosives magazine permit issued under this chapter that covers the storage, commits a Class C infraction.

Sec. 7. A physician or hospital that treats a person for an injury inflicted while the person was making or using a destructive device shall report the injury to a local law enforcement agency under IC 35-47-7-5.

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**Chapter 5. Offenses Relating to Regulated Explosives**

**Sec. 1. Sections 2, 5, and 6 of this chapter do not apply to the following:**

- (1) A person authorized to manufacture, possess, transport, distribute, or use a destructive device or detonator under the laws of the United States, as amended, or under state law when the person is acting in accordance with the laws, regulations, and rules issued under federal or state law.
- (2) A person who is issued a permit for blasting or surface coal mining by the director of the department of natural resources under IC 14-34 when the person is acting under the laws and rules of Indiana and any ordinances and regulations of the political subdivision or authority of the state where blasting or mining operations are being performed.
- (3) Fireworks (as defined in IC 22-11-14-1) and a person authorized by the laws of Indiana and of the United States to manufacture, possess, distribute, transport, store, exhibit, display, or use fireworks.
- (4) A law enforcement agency, a fire service agency, or an emergency management agency of Indiana, an agency or an authority of a political subdivision of Indiana, or the United States and an employee or authorized agent of the United States while in performance of official duties.
- (5) A law enforcement officer, a fire official, or an emergency management official of the United States or any other state if that person is attending training in Indiana.
- (6) The armed forces of the United States or of Indiana.
- (7) Research or educational programs conducted by or on behalf of a college, university, or secondary school that are:
  - (A) authorized by the chief executive officer of the educational institution or the officer's designee; and
  - (B) conducted in accordance with the laws of the United States and of Indiana.
- (8) The use of explosive materials in medicines and medicinal agents in forms prescribed by the most recent published edition of the official United States Pharmacopoeia or the National Formulary.
- (9) Small arms ammunition and reloading components of small arms ammunition.
- (10) Commercially manufactured black powder in quantities not to exceed fifty (50) pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction



primers intended to be used solely for sporting, recreational,  
or cultural purposes in antique firearms or antique devices.

(11) An explosive that is lawfully possessed for use in  
legitimate agricultural activities.

**Sec. 2. A person who knowingly or intentionally:**

- (1) possesses;
- (2) manufactures;
- (3) transports;
- (4) distributes;
- (5) possesses with the intent to distribute; or
- (6) offers to distribute;

a destructive device, unless authorized by law, commits a Class B  
felony.

**Sec. 3. A person who has been convicted of a felony by an  
Indiana court or a court of any other state, the United States, or  
another country and knowingly or intentionally:**

- (1) possesses;
- (2) manufactures;
- (3) transports;
- (4) distributes;
- (5) possesses with the intent to distribute; or
- (6) offers to distribute;

a regulated explosive commits a Class A felony.

**Sec. 4. A person who knowingly or intentionally distributes a  
regulated explosive to a person who has been convicted of a felony  
by an Indiana court or a court of any other state, the United States,  
or another country commits a Class A felony.**

**Sec. 5. A person who knowingly or intentionally distributes or  
offers to distribute:**

- (1) a destructive device;
- (2) an explosive;
- (3) a poison gas; or
- (4) a detonator;

to a person who is less than twenty-one (21) years of age commits  
a Class B felony.

**Sec. 6. A person who:**

- (1) manufactures;
- (2) possesses;
- (3) transports;
- (4) distributes; or
- (5) uses;

a hoax device or replica with the intent to cause another to believe

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that the hoax device or replica is a destructive device or detonator commits a Class D felony.

**Sec. 7. A person who knowingly or intentionally hinders or obstructs:**

- (1) a law enforcement officer;
- (2) a fire official;
- (3) an emergency management official;
- (4) an animal trained to detect destructive devices; or
- (5) a robot or mechanical device designed or used by a law enforcement officer, fire official, or emergency management official;

of Indiana or of the United States in the detection, disarming, or destruction of a destructive device commits a Class B felony.

**Sec. 8. A person who:**

- (1) possesses;
- (2) transports; or
- (3) receives;

a destructive device or explosive with the knowledge or intent that it will be used to kill, injure, or intimidate an individual or to destroy property commits a Class A felony.

**Sec. 9. A person who:**

- (1) possesses;
- (2) transports; or
- (3) receives;

an incendiary or poison gas with the knowledge or intent that it will be used to kill, injure, or intimidate an individual commits a Class B felony.

**Sec. 10. A person who knowingly or intentionally uses an over-pressure device commits a Class A misdemeanor. However, the offense is a Class D felony if the person has a prior unrelated conviction for an offense under this section.**

**Sec. 11. A person who knowingly or intentionally deploys a booby trap commits a Class D felony.**

SECTION 18. IC 35-50-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a

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defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

(A) Arson (IC 35-43-1-1).

(B) Burglary (IC 35-43-2-1).

(C) Child molesting (IC 35-42-4-3).

(D) Criminal deviate conduct (IC 35-42-4-2).

(E) Kidnapping (IC 35-42-3-2).

(F) Rape (IC 35-42-4-1).

(G) Robbery (IC 35-42-5-1).

(H) Carjacking (IC 35-42-5-2).

(I) Criminal gang activity (IC 35-45-9-3).

(J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) The defendant committed the murder by the unlawful detonation of an explosive **or a destructive device** with intent to injure person or damage property.

(3) The defendant committed the murder by lying in wait.

(4) The defendant who committed the murder was hired to kill.

(5) The defendant committed the murder by hiring another person to kill.

(6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:

(A) the victim was acting in the course of duty; or

(B) the murder was motivated by an act the victim performed while acting in the course of duty.

(7) The defendant has been convicted of another murder.

(8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.

(9) The defendant was:

(A) under the custody of the department of correction;

(B) under the custody of a county sheriff;

(C) on probation after receiving a sentence for the commission of a felony; or

(D) on parole;

at the time the murder was committed.

(10) The defendant dismembered the victim.

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(11) The defendant burned, mutilated, or tortured the victim while the victim was alive.

(12) The victim of the murder was less than twelve (12) years of age.

(13) The victim was a victim of any of the following offenses for which the defendant was convicted:

(A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.

(B) Kidnapping (IC 35-42-3-2).

(C) Criminal confinement (IC 35-42-3-3).

(D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

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(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) Except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (k). The court shall make the final determination of the sentence, after considering the jury's recommendation, and the sentence shall be based on the same standards that the jury was required to consider. The court is not bound by the jury's recommendation. In making the final determination of the sentence after receiving the jury's recommendation, the court may receive evidence of the crime's impact on members of the victim's family.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (k).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

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(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

(1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and

(2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

SECTION 19. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2001]: IC 22-12-1-21; IC 22-14-4; IC 35-47-5-1.

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